



State of West Virginia  
DEPARTMENT OF HEALTH AND HUMAN RESOURCES  
Office of Inspector General  
Board of Review  
1027 N. Randolph Ave.  
Elkins, WV 26241

Earl Ray Tomblin  
Governor

Michael J. Lewis, M.D., Ph.D.  
Cabinet Secretary

June 30, 2011

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Dear -----:

Attached is a copy of the Findings of Fact and Conclusions of Law on your hearing held June 15, 2011. Your hearing request was based on the Department of Health and Human Resources' proposal to reduce your homemaker service hours under the Aged/Disabled (HCB) Title XIX Waiver Services Program.

In arriving at a decision, the State Hearing Officer is governed by the Public Welfare Laws of West Virginia and the rules and regulations established by the Department of Health and Human Resources. These same laws and regulations are used in all cases to assure that all persons are treated alike.

Eligibility for the Aged/Disabled Waiver Program is based on current policy and regulations. One of these regulations specifies that for the Aged/Disabled Waiver Program, the number of homemaker service hours is determined based on the Level of Care (LOC). The Level of Care is determined by evaluating the Pre-Admission Screening Form (PAS) and assigning points to documented medical conditions that require nursing services. Program services are limited to a maximum number of units/hours which is reviewed and approved by WVM. (Aged/Disabled Home and Community-Based Services Waiver Policy and Procedures Manual 501.3)

Information submitted at your hearing reveals that you continue to require the degree of care and services necessary to qualify medically for the Aged/Disabled Waiver Program and your documented medical conditions confirm that your Level of Care should be a Level "C" rating. As a result, you are eligible to receive four (4) hours per day or 124 hours per month of homemaker services.

It is the decision of the State Hearing Officer to **uphold** the proposal of the Department to decrease your Level of Care under the Aged/Disabled Waiver Program.

Sincerely,

Pamela L. Hinzman  
State Hearing Officer  
Member, State Board of Review

cc: Erika H. Young, Chairman, Board of Review  
BoSS  
WVMI



**WEST VIRGINIA DEPARTMENT OF HEALTH & HUMAN RESOURCES  
BOARD OF REVIEW**

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**Claimant,**

v.

**Action Number: 11-BOR-1085**

**West Virginia Department of  
Health and Human Resources,**

**Respondent.**

**DECISION OF STATE HEARING OFFICER**

**I. INTRODUCTION:**

This is a report of the State Hearing Officer resulting from a fair hearing for ----- . This hearing was held in accordance with the provisions found in the Common Chapters Manual, Chapter 700 of the West Virginia Department of Health and Human Resources. This fair hearing was convened telephonically on June 15, 2011 on a timely appeal filed April 14, 2011 and received by the Hearing Officer on May 11, 2011.

It should be noted that the Claimant's benefits have continued pending a hearing decision.

**II. PROGRAM PURPOSE:**

Under Section 2176 of the Omnibus Budget Reconciliation Act of 1981, states were allowed to request a waiver from the Health Care Financing Administration (HCFA) so that they could use Medicaid (Title XIX) funds for home and community-based services. The program's target population is individuals who would otherwise be placed in an intermediate or skilled nursing facility (if not for the waiver services). Services offered under the Waiver Program will include: (1) chore, (2) homemaker and (3) case management services. West Virginia has been offering the Waiver Services Program since July, 1982 to those financially eligible individuals who have been determined to need ICF level care but who have chosen the Waiver Program services as opposed to being institutionalized.

**III. PARTICIPANTS:**

-----, Claimant's sister and caregiver, [REDACTED]

-----, Claimant's cousin

Kay Ikerd, RN, Bureau of Senior Services

Lee Ann Beihl, RN, West Virginia Medical Institute

Presiding at the hearing was Pamela L. Hinzman, State Hearing Officer and a member of the State Board of Review.

**IV. QUESTION TO BE DECIDED:**

The question to be decided is whether the Agency was correct in its proposal to reduce the Claimant's homemaker service hours under the Aged/Disabled Waiver (HCB) Program.

**V. APPLICABLE POLICY:**

Aged/Disabled Home and Community-Based Services Manual Sections 501.3.2.1 and 501.3.2.2

**VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED:**

**Department's Exhibits:**

- D-1 Aged/Disabled Home and Community-Based Services Manual Sections 501.3.2.1 and 501.3.2.2
- D-2 Pre-Admission Screening (PAS) assessment completed on March 23, 2011
- D-3 Notice of Decision dated March 30, 2011

**Claimant's Exhibits:**

- C-1 Letter from [REDACTED] M.D., and additional medical documentation

**VII. FINDINGS OF FACT:**

- 1) The Claimant, a recipient of Aged/Disabled Waiver (ADW) Medicaid benefits, underwent an annual reevaluation to verify continued medical eligibility for the program.
- 2) West Virginia Medical Institute (WVMI) Registered Nurse Lee Ann Beihl completed a Pre-Admission Screening (PAS) medical assessment (D-2) on March 23, 2011 and determined that the Claimant continues to meet the medical eligibility criteria. The Claimant was assigned 25 points to documented medical conditions that require nursing services and meets the criteria necessary to qualify as a Level of Care "C" - eligible for four (4) hours per day or 124 hours per month of homemaker services. It should be noted that the Claimant previously qualified for a Level of Care "D"- eligible for five (5) hours per day or 155 hours per month of homemaker services.
- 3) The Claimant was sent notification on March 30, 2011 (D-3) advising her of the proposed reduction in homemaker service hours.

- 4) The Claimant's witnesses contended that additional points should be awarded for the medical conditions/symptoms of dysphagia, angina at rest, and angina upon exertion. According to PAS notes, the Claimant reported occasional chest pain and dysphagia during the assessment, however, the WVMI Nurse did not award points in these areas because there were no physician diagnoses for the conditions. Section 20 of the PAS indicates that the diagnosis of dysphagia was confirmed as it was supported by a prescribed medication, however, the WVMI Nurse testified during the hearing that she had erred in her documentation and the diagnosis is not supported by a prescribed medication.

The Claimant's witnesses also contended that the Claimant should receive an additional point for inability to administer medications because some pills must be placed on the Claimant's tongue. PAS notes indicate that the WVMI Nurse was told the Claimant requires prompting and supervision for medication administration, but is able to put pills in her own mouth.

As the WVMI Nurse testified she had not followed up with the Claimant's physician to confirm the diagnoses of dysphagia and angina – and Bureau of Senior Services Registered Nurse Kay Ikerd indicated that it had been WVMI's responsibility to attempt to verify the diagnoses - the hearing record remained open until June 29, 2011 to allow the Claimant's representatives an opportunity to provide physician verification. It should be noted that the Claimant's representatives provided a letter from [REDACTED] M.D., and additional medical documentation on June 29, 2011 (C-1). Dr. Que's letter provides no information about dysphagia or angina, and the supporting documentation only indicates a history of angina.

- 5) Aged/Disabled Home and Community-Based Services Waiver Policy Manual Sections 501.3.2.1 and 501.3.2.2 (D-1): There will be four levels of care for clients of ADW homemaker services. Points will be determined based on the following sections of the PAS:

- #23- Medical Conditions/Symptoms- 1 point for each (can have total of 12 points)
- #24- Decubitis- 1 point
- #25- 1 point for b., c., or d.
- #26 Functional abilities
  - Level 1- 0 points
  - Level 2- 1 point for each item a. through i.
  - Level 3- 2 points for each item a. through m.; i. (walking) must be equal to or greater than Level 3 before points are given for j. (wheeling)
  - Level 4 - 1 point for a., 1 point for e., 1 point for f., 2 points for g. through m.
- #27 Professional and Technical Care Needs- 1 point for continuous oxygen
- #28 Medication Administration- 1 point for b. or c.
- #34- Dementia- 1 point if Alzheimer's or other dementia
- #34- Prognosis- 1 point if terminal

The total number of points allowable is 44.

**LEVELS OF CARE SERVICE LIMITS**

Level A- 5 points to 9 points- 2 hours per day or 62 hours per month

Level B- 10 points to 17 points- 3 hours per day or 93 hours per month

Level C- 18 points to 25 points- 4 hours per day or 124 hours per month

Level D- 26 points to 44 points- 5 hours per day or 155 hours per month

**VIII. CONCLUSIONS OF LAW:**

- 1) Policy dictates that an individual's Level of Care for the Aged/Disabled Waiver Program is determined by the number of points obtained on the PAS assessment tool.
- 2) The Claimant was awarded 25 points as the result of a PAS completed by WVMi in March 2011 in conjunction with her annual medical evaluation.
- 3) As a result of information presented during the hearing, no additional points are awarded to the Claimant. The Claimant's representatives contended that she has been diagnosed with dysphagia and angina, however no verification was provided to confirm that these are current diagnoses. In addition, no point can be awarded for inability to administer medication as the WVMi Nurse was informed on the assessment date that the Claimant could put medication in her mouth with prompting/supervision by family members.
- 4) The Claimant's total number of points remains at 25, rendering her eligible to receive a Level "C" Level of Care.

**IX. DECISION:**

It is the decision of the State Hearing Officer to **uphold** the Agency's proposal to reduce the Claimant's homemaker service hours under the Aged/Disabled, Title XIX (HCB) Waiver Program.

**X. RIGHT OF APPEAL:**

See Attachment

**XI. ATTACHMENTS:**

The Claimant's Recourse to Hearing Decision

Form IG-BR-29

**ENTERED this 30<sup>th</sup> Day of June, 2011.**

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**Pamela L. Hinzman  
State Hearing Officer**